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Plan to Reduce the Cost of the State Cost-share Program for Salt and Sand Storage Facilities

Maine Department of Transportation

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Memorandum

To: Senator Ed Mazurek
Representative Ken Theriault
Members of the Joint Standing Committee
on Transportation

From: Nina A. Fisher, Legislative Liaison

Date: February 26, 2014

Re: **Municipal Sand/Salt Facilities**



Pursuant to PUBLIC LAW 2013, Chapter 354, (LD 1480), PART O states,

***Sec. O-1. Salt shed program.** The Department of Transportation, referred to in this section as "the department," in conjunction with the Department of Environmental Protection, shall develop a plan to reduce the cost of the state cost-share program for salt and sand storage facilities, referred to in this section as "the sheds," under the Maine Revised Statutes, Title 23, section 1851 and to end the program within a certain number of years. This plan must consider amounts due municipalities for sheds already built, the number and priority of possible new sheds, the effect that best practices regarding winter snow and ice operations may have on the size and cost of sheds and reimbursement formulas. The department shall submit the plan, with recommended legislation, to the Joint Standing Committee on Transportation no later than January 17, 2014. The committee may submit a bill related to the subject matter of this section to the Second Regular Session of the 126th Legislature.'*

BRIEF HISTORY

1986 to 1999 -- under State law passed in 1987, all owners of sand/salt piles in Maine were required to register their pile with the Maine Department of Environmental Protection (DEP) in an effort to protect drinking water supplies. As a result of this law, hundreds of municipal, MaineDOT, county, and private sites were registered and granted exemption from violations of any DEP groundwater protection laws until such time that a facility could be constructed to prevent salt contamination of domestic water supplies. All sites were given a DEP Priority number (1 to 5) which defined the current state of well water contamination in nearby wells. In other words, Priority 1 sites had one or more wells nearby with chloride levels exceeding the State Drinking Water Limit of 250 mg/L, whereas a Priority 5 site is an area completely serviced by public water and the pile is having no measurable effect on the source of public water.

The Program has always been a joint Program of the MaineDOT and the DEP. All environmental issues due to piles and Priority numbers have been the jurisdiction of the DEP. All building issues from design and engineering and review through construction and eventual partial reimbursement have been provided by the MaineDOT.

1999 to current – the Program was significantly modified by the 119th Legislature and the highlights included the following:

- all Priority 4 and 5 sites lost the requirement to erect a building and eligibility to receive State financial assistance for future construction. Any buildings at Priority 4 and 5 sites built after November 1, 1999 were not eligible for State assistance.
- all remaining “unbuilt” Priority 1, 2, and 3 sites were still required to erect facilities by an adjusted deadline.
- all new sand/salt or salt piles sited after October 1, 1999 are required to register with DEP and follow siting and operational requirements in Chapter 574 “*Siting and Operation of Road Salt and Sand-Salt Storage Areas*”.
- DEP's criteria for assigning Priority numbers expanded from strictly a domestic drinking water supply impact to one which included additional factors such as potential impact on mapped significant sand and gravel aquifers and surface waters plus the pile's proximity to residential areas.

FUNDING

Funding was established to assist municipalities and counties in construction of their facilities which commonly take the shape of a self-contained building. Typically each building is designed and built by the municipality and partial state reimbursement occurs after completion of the project. The state share is different for every town and depends on the number of winter plowing miles. The actual state share is based on the ratio of state aid miles to townway miles and ranges from a minimum of 25% (all townways) to 100% (all state aid miles). In most cases, the state share has ranged between 40% and 70%. The maximum size facility has always been based on a maximum of 80 cubic yards of salted sand per mile. For example, a town with 30 miles of winter miles could build up to a 2400 cubic yard facility.

Since 1986, there have been at least 13 separate legislative allocations to reimburse the municipalities/counties and the large majority have been from the Highway Budget.. Original sources were from bond issues and the General Fund. All funding has been distributed “*according to the priority established..... in a consistent and timely manner*”.

The following municipal or county buildings have been built since 1987 and all but the Priority 5 facilities have been reimbursed their State share as of May 2013 for a total of \$11,117,134.

Priority 1: 52 built with a total state reimbursement of \$3,333,443.

Priority 2: 30 built with a total state reimbursement of \$2,104,545.

Priority 3: 64 built with a total state reimbursement of \$4,286,406

Priority 4: 35 built with a total state reimbursement of \$1,392,740

Priority 5: 15 (not reimbursed) with a current state obligation of \$813,486.

All buildings in Priority 1, 2, and 4 have been built and reimbursed with no further obligations. All built Priority 3 buildings have been reimbursed but there are still 29 Priority 3 towns which have an obligation to erect a building but have no statutory deadline. There are 23 Priority 5 buildings built in the 80's and 90's that have been not been reimbursed. See Appendix for a list of these Priority 3 and 5 towns.

CURRENT SITUATION

Over the last decade, priorities and obligations regarding these storage buildings have changed on both the state and municipal/county levels. This program has existed for 28 years and has accomplished its goal of protecting Maine's groundwater and drinking water supplies in over 200 municipal/county sites.

There are 29 remaining "unbuilt" Priority 3 municipal sites and the majority of these towns have stated that they will only build "if they are mandated to build and the state reimbursement funds exist". In reviewing correspondence over the last 27 years with these towns, about half of them have never responded to MaineDOT at all. Over the summer/fall of 2013, two Priority 3 towns designed and completed construction of their facilities (Jonesport & Brooks) and are now waiting for their state reimbursement. From another perspective, there appears to have been no persistent complaints or active contamination claims at these sites so the desire to build has been a very low priority. However, Priority 3 locations are considered to have moderate to high environmental impacts with documented (or suspected) chloride concentrations greater than 20 mg/L in private drinking water wells in 1999. Since these sand/salt piles have remained uncovered since 1999, it is very likely that impacts of sodium and chloride to private wells has increased. Additionally, State law requires protection of ground water, regardless of whether it is actively being used as a drinking water supply.

This situation will continue for the foreseeable future as long as this Program's status quo remains the same.

RECOMMENDATIONS

In an effort to make a final offer of state assistance to these 29 towns, and recognize that snow & ice control practices and technologies have changed dramatically over the last couple decades, the MaineDOT has conferred with DEP staff and has the following recommendations to sunset this Program.

1. Provide the state share for the remaining 29 Priority 3 sites by making one last offer to those towns. After statutory changes, notify each of them by certified mail that they will have one final chance at meeting their obligation with partial state assistance. State technical assistance would continue as long as needed for these towns. Also, if any of these towns have been planning/designing now for imminent construction, we should honor our commitments on sizes and state share that they are counting on.
2. Any town not interested in construction will lose statutory exemptions regarding all statutes related to groundwater contamination or discharge in the future. In other words, the town would still be 100% responsible for any pollution claims, future building construction, and subject to DEP enforcement actions.
3. The state share would remain the same based on state aid and local mileages.
4. The maximum size facility would be modified to recognize current snowfighting practices and technologies. Rather than allowing a maximum size building based on 80 cubic yards (cy) of salted sand per mile, the recommended practice would allow for 20 tons of straight salt per mile of State Aid

road and continue the 80 cy for local roads. For the remaining 29 towns, that would reduce the total volume housed from 55,000 cy to 47,000 cy.

5. Provide the reimbursement funding to those 15 “built” Priority 5 towns.

STATUTORY BASIS

23 MRSA § 1851 – State cost-share program for salt and sand storage facilities

23 MRSA § 1852 -- Salt and sand storage facilities

38 MRSA §451-A -- Time schedule for salt and sand-salt storage program

APPENDIX

Municipal Priority 3 Unbuilt sites						
January 2014						
	Last contact	Max Size (current)	Max Size (proposed)	State %	Actively Planning?	Comment
Addison	Jan-14	2400	2400	74.3	yes	met with BOS Fall 2011, planning now, met again January 2014
Amity	Dec-99	900	900	25	no	town has never called
BrightonPlt/Kingsbury Plt/Mayfield Twp	Mar-13	1340	1340	90-100	yes	County is planning now due to loss of contractor
Canaan	Sep-09	3600	3300	35.3	maybe	met with BOS 2009, ready to build but no word since then
Canton	Feb-07	2300	1660	59.7	maybe	have \$30K
Charleston	Jan-09	2800	2100	74.3	maybe	apparently saving \$ each year talked to Selectman in Dec 2011
Cutler	Dec-11	1050	600	53.5	yes	
Freedom	Oct-11	2000	1600	51.5	yes	have started foundation
Grand Isle	Mar-06	932	932	25	maybe	in 2006, wanted to build just to store salt
Harmony	Nov-99	2800	2350	45.7	no	town has never called
Hebron	Dec-99	2600	2100	52.2	no	
Hodgdon	Nov-99	2800	2150	55.6	no	sent plans in for review 1996
Industry	Feb-08	2350	1700	62.6	maybe	rebuilt salt shed in 2008
Limerick	Dec-99	3120	2940	31.8	no	
Limestone	Dec-12	2920	2700	35.5	maybe	talked at length in 2005 but nothing since; 2013 will build only if have to
Livermore	Dec-12	3856	3500	37.2	no	as of Dec 12, they are waiting for state funds before they do anything
Long A Twp	Feb-00	50	50	25	no	town has never called, only half mile of road
Lovell	Feb-00	3400	3250	32.4	no	in 2000, they said they'd build in "within 5 yrs".
Mars Hill	Jan-09	2900	2400	46.2	maybe	
Merrill	Dec-99	750	750	25	no	town has never called
New Canada	Dec-99	930	800	42.6	no	town called once in 1997
New Limerick	Apr-11	1000	600	77	yes	been saving every year
Newry	Jan-12	1000	900	31	yes	been storing @DOTBethel but last year is 2012
St Albans	Dec-99	4500	3150	61.5	no	town has never called
Stow	Dec-99	1100	800	59.1	no	town has never called
Vanceboro	Dec-99	240	240	25	no	town has never called
Webster Plt	Dec-99	600	500	45.1	no	town called Aug 97 but nothing since

Priority 5 towns		Built but unpaid		
Jan-13				
TOWN	BUILD DATE	RECVD DOCS	\$\$ Due	Cumul. \$\$
Skowhegan	1995	6/24/1995	\$ 62,589.02	\$ 62,589.02
Eliot	1991	4/6/1992	\$ 37,999.01	\$ 100,588.03
Unity	1996	5/20/1996	\$ 35,620.12	\$ 136,208.15
So. Portland	1993	7/9/1996	\$ 39,727.74	\$ 175,935.89
Wiscasset	1988	11/19/1997	\$ 49,651.92	\$ 225,587.81
Bridgton	1996	12/4/1997	\$ 79,049.13	\$ 304,636.94
Millinocket	1992	4/14/1998	\$ 58,024.80	\$ 362,661.74
Rockport	1987	6/1/1998	\$ 25,944.75	\$ 388,606.49
Scarborough	1996	6/9/1998	\$ 124,797.10	\$ 513,403.59
Morrill	1996	7/1/1998	\$ 48,842.69	\$ 562,246.28
Paris	1988	8/25/1999	\$ 64,253.32	\$ 626,499.60
Eddington	1999	10/20/1999	\$ 23,736.00	\$ 650,235.60
Westfield	1993	11/9/1999	\$ 9,725.12	\$ 659,960.72
Freeport	1993	11/24/1999	\$ 70,985.77	\$ 730,946.49
Fort Fairfield	1998	11/1/2002	\$ 82,539.63	\$ 813,486.12

38 §451-A. Time schedule variances

1-A. Time schedule for salt and sand-salt storage program. An owner or operator of a salt or sand-salt storage area is not in violation of any groundwater classification or reclassification adopted on or after January 1, 1980 with respect to discharges to the groundwater from those facilities, if the owner or operator has completed all steps required to be completed by the schedules set forth in this subchapter. The commissioner shall administer this schedule according to the project priority list adopted by the board pursuant to section 411 and the provisions of this subsection. A municipal or county site classified as Priority 4 or Priority 5 as of April 1, 2000, which was registered pursuant to section 413 prior to October 15, 1997, may not be in violation of any groundwater classification or reclassification with respect to discharges to the groundwater from those facilities.

A. Preliminary notice for municipal and county Priority 3 projects must be completed and submitted to the Department of Transportation ~~by the following dates:~~ within 2 months from notification of funds from the Department of Transportation

~~(1) For Priority 1 and 2 projects, the latest of the following dates:~~

~~(a) One year from a designation under section 411;~~

~~(b) One year from notice of availability of a state grant, if eligible; or~~

~~(c) January 1996.~~

~~(2) For municipal, state and county Priority 3 projects, the later of the following dates:~~

~~(a) One year from notice of availability of a state grant, if eligible; or~~

~~(b) January 2003.~~

~~(3) For other Priority 3 projects, the later of the following dates:~~

~~(a) One year from a designation under section 411; or~~

~~(b) January 1997. [1999, c. 387, §5 (AMD).]~~

D. For municipal and county sites only, review of final plans with the Department of Transportation must be completed within 14 months ~~of the dates established in paragraph A for each priority category~~ from notification of funds from the Department of Transportation

E. Construction must be completed and the facility in operation within 26 months ~~of the dates established in paragraph A for each priority category.~~ from notification of funds from the Department of Transportation

In no case may violations of the lowest groundwater classification be allowed. In addition, no violations of any groundwater classifications adopted after January 1, 1980, may be allowed for more than ~~3 years~~ 26 months from the date of an offer of a state grant for the construction of those facilities.

The department may not issue time schedule variances under subsection 1 to owners or operators of salt or sand-salt storage areas.

An owner or operator of a salt or sand-salt storage area who is in compliance with this section is exempt from the requirements of licensing under section 413, subsection 2-D.

An owner or operator is not in violation of a schedule established pursuant to this subsection if the owner or operator is eligible for a state grant to implement the schedule and the state grant is not available.

23 §1851. State cost-share program for salt and sand storage facilities

The Department of Transportation may administer funds for the construction of municipal or county salt and sand storage facilities in order to reduce salt pollution of ground and surface waters. In administering these funds, the department shall provide reimbursement to municipal and county governmental entities for approved projects in the following order, ~~according to priorities established pursuant to Title 38, section 411:~~ based on receipt date of final paperwork:

1. Priority 1 projects. ~~Priority 1 projects, as long as the site was registered with the Department of Environmental Protection pursuant to Title 38, section 413 before October 15, 1997, regardless of the date the priority rating was designated;~~

~~[1999, c. 387, §1 (NEW) .]~~

2. Priority 2 projects. ~~Priority 2 projects, as long as the site was registered with the Department of Environmental Protection pursuant to Title 38, section 413 before October 15, 1997, regardless of the date the priority rating was designated;~~

~~[1999, c. 387, §1 (NEW) .]~~

3. Priority 3 projects. ~~Priority 3 projects that were designated before October 15, 1997 and continue to be so designated on April 1, 2000 and Priority 3 projects designated on April 1, 2000 that were designated Priority 5 projects prior to October 15, 1997;~~

~~[1999, c. 387, §1 (NEW) .]~~

4. Priority 4 projects. ~~Priority 4 projects that were constructed before November 1, 1999 with plans and financial information submitted to the Department of Transportation by November 1, 1999. Notwithstanding any other provision of this section, 20% of all funds authorized by the Legislature after January 1, 1999 for municipal reimbursement of sand and salt storage facility construction costs must be used to reimburse municipalities with Priority 4 projects eligible under this subsection until all such eligible projects have been fully reimbursed. The department shall reimburse municipalities eligible under this subsection in the order in which those municipalities complete the submission of all required documentation;~~

~~[1999, c. 387, §1 (NEW); 1999, c. 387, §7 (AFF) .]~~

5. Priority changes. ~~Priority 3 projects designated on April 1, 2000 that were designated Priority 4 projects as of October 15, 1997;~~

~~[1999, c. 387, §1 (NEW) .]~~

6. Priority 5 projects. ~~Priority 5 projects that were constructed before November 1, 1999, with plans and financial information submitted to the Department of Transportation by November 1, 1999;~~

~~[1999, c. 387, §1 (NEW) .]~~

7. Other projects. ~~All other projects eligible for reimbursement. Priority 4 and Priority 5 sites designated on April 1, 2000 are not eligible for reimbursement.~~

~~[1999, c. 387, §1 (NEW) .]~~

Allocation of funds must be based upon the sum of 25% of the expenses permitted plus 1.25 times the ratio of miles of state and state aid roads maintained for winter maintenance, as described in sections 1001 and 1003, to all miles maintained for winter maintenance by the municipality, quasi-municipal agency or county. The Department of Transportation shall ~~establish~~ follow their guidelines to reimburse eligible local government entities in a consistent and timely manner. ~~{1999, c. 387, §1 (RPR).}~~

The Department of Transportation shall review and approve municipal and county plans and specifications pursuant to established departmental guidelines for design, construction and size before a municipality or county constructs a facility. Municipal actions inconsistent with such guidelines are reimbursed at the sole discretion of the department. ~~{1999, c. 387, §1 (RPR).}~~

Reimbursable expenses under this section do not include land acquisition or debt service.

~~23 §1852. Salt and sand storage facilities~~

~~If funds are available for grants to an owner or operator of a project in the funding order established in section 1851, yet if within one year of notice of availability of the funds the owner or operator fails to submit to the Department of Transportation in writing a preliminary plan and estimate, a notice of a completed or partially completed facility or a notice of a signed contract for imminent construction of a facility, the Department of Transportation may make any funds committed or otherwise obligated to that project under this section and section 1851 available to any constructed project of a lower funding priority under section 1851 that has sent all required submissions to the department. A project that loses its funding under this paragraph remains eligible for reimbursement at a later date, subject to availability of funds. {1999, c. 387, §2 (NEW).}~~

~~The department may not reimburse a municipality or county under this section or section 1851 for that portion of construction expenses paid for with a grant awarded in accordance with Public Law 1991, chapter 849, section 3 or under the Community Development Block Grant Program.~~